

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:04CV21-03-MU

FRANCISCO CURBELO, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 JIM PENDERGRAPH et. al., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court on Plaintiff's "Request for Indigent Petition of Copy of Entirely [sic] Record" (Document No. 33) and Motion to Continue (Document No. 34), filed June 1, 2006. Plaintiff alleges that his box containing evidence and documents relevant to this case disappeared when being transferred from Mecklenburg County Jail in North Carolina to Schuylkill Federal Detention Center in Minersville, Pennsylvania. He further alleges that the inmate property officer in the Pennsylvania correctional facility has delayed investigation into his claim<sup>1</sup>. As a result, Plaintiff asserts that he is disadvantaged in the prosecution of this case and has submitted a request for a copy of the entire record and a Motion to Continue.

Plaintiff commenced this action on January 20, 2004, alleging *inter alia* that Defendant Jim Pendergraph and other Mecklenburg County staff violated his Constitutional rights under 42 U.S.C. §1983 (Document No. 1). Defendants filed a Motion for Summary Judgment on December 16, 2005 (Document No. 23-1), and by Order dated June 15, 2006 this Court

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<sup>1</sup> The Court requests that the Schuylkill Federal Detention Center and the Mecklenburg County Jail resolve the issue of the location of Plaintiff's documents and return Plaintiff's property to him as soon as practicable.

dismissed Plaintiff's Complaint and granted Defendants' Motion for Summary Judgment (Document No. 35.) Given that the Court has already ruled on Defendants' Motion for Summary Judgment, Plaintiff's Motion to Continue and Motion for a Copy of his Entire File are DENIED as moot.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that:

(1) Plaintiff's "Request for Indigent Petition of Copy of Entirely [sic] Record"

(Document No. 33) is DENIED as moot.

(2) Plaintiff's Motion for a Continuance (Document No. 34) is DENIED as moot.

(3) The Clerk is directed to send a copy of this order to the Plaintiff at Federal

Correctional Institution Schuylkill, P.O. Box 759, Minersville, PA 17954-0759.

(4) Plaintiff is directed to notify the Clerk's office in writing of his change of address.

**SO ORDERED.**

Signed: June 19, 2006



Graham C. Mullen  
United States District Judge



CC: Sheriff Pendergraph, Mecklenburg County

Schyulkill Federal Detention Center Warden